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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 15 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Geographic Partitioning and Spectrum)
Disaggregation by Commercial Mobile)
Radio Services Licensees)
)
Implementation of Section 257 of the)
Communications Act -)
Elimination of Market Entry Barriers)

WT Docket 96-148

~~GN Docket No. 96-113~~

To: The Commission

COMMENTS OF ILLUMINET AND THE INDEPENDENT ALLIANCE

Illuminet and the Independent Alliance (collectively referred to hereafter as the "Alliance"), pursuant to Section 1.429 of the Commission's Rules,¹ respectfully submit the following Comments in response to the *Notice of Proposed Rulemaking* in the above-captioned proceeding released by the Commission on July 15, 1996 ("NPRM"). By this *NPRM*, the Commission is seeking comments regarding proposals to modify its Personal Communications Service ("PCS") policies for partitioning of licenses on a geographic basis and for disaggregation of licenses on a frequency spectrum basis. More specifically, the Commission is considering extending partitioning opportunities to parties other than rural telephone companies ("RTCs").

The interest in this proceeding of both Illuminet and the Independent Alliance is to encourage the Commission to maintain in its rules measures that encourage the partitioning of broadband PCS licenses to RTCs. This objective is consistent with both the Commission's established policies and legislative directives which recognize that the public interest is

¹ 47 C.F.R. § 1.429.

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served by Commission action that promotes the speedy provision of PCS services in rural areas by the rural telephone companies that serve those areas.

Illuminet and its affiliates have demonstrated their commitment to the deployment of a wide variety of advanced telecommunications services throughout rural America.² Illuminet is similarly committed to assisting the independent telephone company industry in bringing PCS to rural portions of this country.³ The Independent Alliance is a group of rural telephone companies that share a common interest in providing broadband PCS services to rural subscribers residing in areas with communities of interest associated with their wireline service.

The Alliance urges the Commission, as it considers changes to its partitioning and spectrum disaggregation rules, to maintain, at a minimum, a core application of the original preferences intended for rural telephone companies. The limited proposals suggested below,

² Illuminet is the successor corporate entity to USTN Services, Inc. ("USTN") and its affiliates, U.S. Intelco Networks, Inc., U.S. Intelco Wireless Communications, Inc., and Independent Telecommunications Network, Inc. (ITN). USTN, through its affiliates, has been an active participant in all phases of the PCS proceedings, having advocated consistently the philosophy supporting the positions presented herein. See, e.g., Comments of U.S. Intelco Networks, Inc., filed November 10, 1993, and Reply Comments filed November 30, 1993 (in response to the *Notice of Proposed Rule Making*, In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, released October 12, 1993). Illuminet is owned by more than 250 independent telephone companies ("Independents"), and provides a wide variety of services to over 1000 independents nationwide, including an independent SS7 network and related database services, calling card billing validation services, 800 RESPORG services and revenue administration and other related database services.

³ Illuminet, through its predecessor affiliates, has supported the Independents in their PCS endeavors since 1993 by providing education, planning and other support services. In addition, Illuminet represents the interests of Independents by assisting in the negotiation of PCS equipment and service procurement agreements.

if adopted, will preserve the purpose and benefits that Congress envisioned, and the Commission previously embraced, for RTC partitioning. The Commission's partitioning and disaggregation policies should continue to recognize the RTCs' contribution and commitment to service in rural areas and the public interest that is served by fostering their participation in the delivery of new telecommunications services.

I. THE BASIS FOR THE POLICY AFFORDING PREFERENCES TO RURAL TELEPHONE COMPANIES HAS NOT CHANGED.

The Commission has previously considered the benefits of partitioning opportunities for rural telephone companies in its broadband PCS proceeding. For example, in adopting the arguments of commenting parties, the Commission concluded that partitioning "would encourage rural telephone companies to take advantage of existing infrastructure in providing PCS services, thereby speeding service to rural areas."⁴ The Commission's current partitioning rules are responsive to the directives of Congress⁵ and allow RTCs with partitioned spectrum to deploy PCS in rural areas on a time schedule reasonably concurrent with that for urban areas:

[R]ural telephone companies who cannot afford or do not desire to bid for or construct PCS systems for an entire BTA can thus acquire licenses in areas they wish to serve or form a bidding consortia and partition the entire BTA among

⁴ *In the Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Report and Order*, 9 FCC Rcd 5532, 5598 ("Fifth R&O") ("these proposals have merit, and therefore we now adopt a license partitioning system to provide [RTCs] the enhanced opportunity to participate in the provision of broadband PCS and to deploy broadband PCS in their rural service areas rapidly.") *id.*

⁵ Congress explicitly included RTCs in the list of those entities to be included in the wide dissemination of licenses and stated that auctions and safeguard policies should promote the rapid deployment of new technologies and services, including to those residing in rural areas, without delays. *See* 47 U.S.C. §309(j)(3)(A-B).

themselves. We believe that rural partitioning is an efficient method of getting a license in the hands of an entity that will provide rapid service to rural areas.⁶

Ultimately, in the *Fifth R&O*, the Commission rejected all other former proposals and policies with respect to preferential measures for RTCs in favor of the current partitioning approach as the single consideration directed specifically to promoting participation by RTCs in providing PCS. The current partitioning rules for RTCs remain as the only measure to carry out the Section 309(j) directives separate and apart from those measures directed toward all small businesses.⁷ The Commission in this proceeding should not, by expanding its partitioning rules, eliminate the only effective, remaining preference for RTCs.

II. RURAL TELEPHONE COMPANIES HAVE RELIED ON THE COMMISSION'S PARTITIONING RULES.

A. Some Rural Telephone Companies Did Not Participate In The Auctions Because Partitioning Was Expected To Remain A Viable Means Of Fulfilling Their Rural Service Needs.

Some RTCs, including some of the Alliance members, relied on the availability of exclusive partitioning opportunities for RTCs in designing their business, service and auction participation plans preceding the bidding for the A, B, and C blocks. Many decided not to participate directly in the auctions in favor of seeking partitioning with license winners at some point when the market structure was better determined and the business plans of the winning bidders became more apparent.⁸ The RTCs relied on the rules that require

⁶ *Fifth R&O* at para. 152.

⁷ *Id.* at para. 153.

⁸ Many winning bidders are currently preoccupied with initial start-up activities and have not had the time or resources to concentrate on partitioning with RTCs. Initial discussions with the winners, however, indicate that once their business and area coverage plans are more finalized, they would be interested in partitioning spectrum with RTCs.

licensees interested in partitioning to negotiate with rural telephone companies for the areas related to their service territory. The adoption of rules under consideration in this proceeding would negate these plans without any opportunity by RTCs to rethink auction participation.⁹

B. Some Rural Telephone Companies Initially Participating In Auctions Eventually Opted To Pursue Partitioning Once The Bidding Became Prohibitively High.

Some RTCs participated in the auctions for the A, B, and C Blocks. In fashioning the Block C rules, specifically, the Commission initially believed that RTCs would have a relatively high probability of competing in the auction process and actually becoming the winning bidders for those Basic Trading Areas ("BTAs") related to their service areas. The outcome of the auctions, generally, and the C-Block results, specifically, now demonstrate, with but a few exceptions, that the winning bidders required significant financial backing.¹⁰

Many RTCs participated in the C-Block auctions (and to a lesser extent the A and B Block bidding) in the earlier rounds in hopes of winning a BTA (or MTA) license and providing PCS to their rural service territory. However, as the bidding prices escalated, buoyed by the dominance of big-pocket participants, many of those RTCs initially participating eventually faced the reality that the commitment would be beyond their risk

⁹ Until recently, the RTCs that relied on the availability of partitioning were a smaller subset of companies than those the Commission has now decided should qualify as RTCs. *See Report and Order*, WT Docket No. 96-59 and GN Docket No. 90-314, released on June 24, 1996, at paras. 62-67.

¹⁰ This conclusion is demonstrated by the fact that the total winning bids for the C Block (where eligibility was limited to "entrepreneurs") for a single 30 MHz license far exceeded the combined total winning bids for the two 30 MHz PCS blocks auctioned last year.

tolerance and financial limits. It became apparent to these RTCs that attempting to seek a license for an entire BTA could imprudently jeopardize their commitment to their current LEC operation and the financial viability of their companies. However, again, as these companies reluctantly dropped out of the bidding process, they did so secure in their reliance on the Commission's rules with regard to their exclusive ability to obtain partitioning of PCS licenses to provide service in areas associated with their existing wireline service areas.

The proposals under examination in this instant proceeding would remove the exclusive option upon which these RTC losing bidders and RTC non-bidders relied. The Commission may still find that expansion of non-rural telephone company partitioning for areas not related to RTCs' service areas may have merit. However, any change in policy and rules should not automatically revoke the original opportunities afforded RTCs and negate the potential plans to bring wireless services to the areas to which they are most committed.

III. THE COMMISSION CAN ACCOMMODATE ITS INTERESTS IN THIS PROCEEDING WHILE PRESERVING THE ORIGINAL BENEFITS OF THE RURAL TELEPHONE COMPANY PREFERENCES.

Consistent with the discussion above, the Alliance recommends a set of modest proposals that will accommodate both the Commission's interest in expanding partitioning and permitting disaggregation while preserving and promoting the RTCs' opportunity to participate in PCS in areas related to their service territory. The recommended approach: 1) is consistent with the former partitioning rules; 2) will preserve the Congressional intent to give preferences to RTCs and to speed delivery of wireless services to rural areas; and 3) will also accommodate disaggregating spectrum and expansion of partitioning eligibility in

areas unrelated to RTC service territories.

SPECIFIC PROPOSALS

1. **Disaggregation.** The Alliance agrees that the Commission should adopt its proposals for spectrum disaggregation, and the combination of partitioning and disaggregation, as outlined in the *NPRM*, but only to the extent that the rule changes remain consistent with the partitioning proposals discussed below.¹¹ The disaggregation will result, as the Commission expects, in the more efficient utilization of spectrum and delivery of services to the public.
2. **Rural Telephone Company Partitioning.** The Alliance recommends that the Commission maintain the current exclusive partitioning option for RTCs for the areas related to their LEC service territory. These companies have relied on the availability of this option and should be allowed to proceed with negotiations under this option. Maintaining this option for areas related to RTCs while expanding the option elsewhere to others would best preserve the original policy considerations.
3. **Rural Telephone Company First Right For Partitioning.** While the Alliance does not support any expansion of partitioning rights in RTC service areas, should the Commission nevertheless move ahead with allowing others to partition areas related to RTCs' service areas, then it should adopt the "next-best approach" to treatment of RTCs. For those areas related to RTC service areas, the current policy benefits could be "next best" maintained by providing RTCs an "exclusive first right-of-refusal" to partition the relevant geographic area.

¹¹ Disaggregation of spectrum frequencies also impacts the partitioning areas related to RTC service territories. For example, if 10 MHz were disaggregated from a BTA or MTA licensee holding 30 MHz, a portion of the disaggregated 10 MHz would be related to the partitioning interests of all RTCs located in the BTA or MTA.

Before a licensee accepts an offer from another party for geographic partitioning related to a RTC's service area, the licensee should be required first to present the offer to the relevant RTC for its first right consideration and option to partition the area related to its service area. If the Commission permits parties other than RTCs to partition licenses in areas associated with RTC wireline services, the adoption of this "next-best" proposal is necessary to encourage, to the maximum extent possible, the licensee to enter into an agreement with a RTC consistent with the Commission's policy findings and the legislative directives which form the basis for the existing rule. This next-best approach will foster service provision by RTCs that are committed to these rural areas, thereby minimizing the danger that rural areas served by RTCs fall victim to "technology red-lining" or market-lagging PCS introduction.

This "next-best" proposal, if adopted, will inevitably lead to competition between local RTCs and others seeking partitioned areas in instances where the original licensee opts to partition. For obvious reasons, the Alliance is hesitant to enter into what could become a "mini-auction" among potential partitionees for RTC service areas. We are concerned that the mini-auctions could lead to artificially higher acquisition cost for partitioning related to RTC service areas compared to what negotiations may have yielded under the former RTC-exclusive rules upon which the RTCs relied. From the standpoint of the RTCs and their subscribers, this competition could have negative effects on the ultimate service provision in rural areas and the relative, potential benefits to customers. Accordingly, if the Commission opts for this "next-best" approach, it should be fashioned to ensure that RTCs are only exercising their refusal rights in response to bona fide requests of others.

4. **Rural Telephone Company Fill-In Rights.** The Commission's build-out requirements, including the new options the Commission is proposing for parties that partition, will inevitably result in vast rural areas not receiving PCS service in the next several years no matter what disaggregated spectrum or geographic partitioning may be available. To foster the goal of universally available PCS, those RTC service areas (and areas related to their service area) that have not yet received service following the initial license period should be available automatically to an RTC through a fill-in application process.

This process could be similar to the licensing process applied to phase 2 cellular license fill-ins. The public interest will not be served if the Commission affords the original licensee a renewal expectancy for unserved areas. Instead, during the first year following the expiration of the initial term of the license, an RTC should have an exclusive right to a license for any unserved area related to its service territory.

IV. CONCLUSION.

The Alliance recommends that the Commission proceed, subject to the minor accommodations described herein, with its proposals for spectrum disaggregation as outlined in the *NPRM*. With respect to expanding eligibility, the Commission should preserve the benefits manifested in the current RTC partitioning rules by adopting the

recommendations offered above. These measures should be adopted because they will:

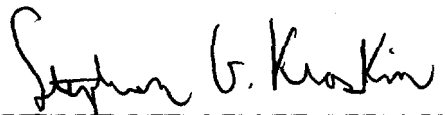
1) promote the delivery of wireless services universally; 2) will improve the likelihood that PCS service will be deployed to rural areas on a timetable similar to that expected for more urban areas; 3) will fulfill the expectations of RTCs that relied on the current rules in their decisions regarding already completed auctions; and 4) will result in more efficient utilization of spectrum by PCS providers.

Respectfully Submitted,

ILLUMINET and the

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August 15, 1996

CERTIFICATE OF SERVICE

I, Nicola A. Chenosky, hereby certify that a copy of the foregoing **Comments of Illuminet and the Independent Alliance** in CC Docket No. 96-148 was served on this 15th day of August 1996, by first class, U.S. mail, postage prepaid, to the following parties:


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